

Message Text

CONFIDENTIAL

PAGE 01 OECD P 10256 01 OF 04 221804Z

51

ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 AID-05 CEA-01 CIAE-00 COME-00

EB-07 EA-06 FRB-03 INR-07 IO-10 NEA-09 NSAE-00

OPIC-03 SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01

INRE-00 SSO-00 NSCE-00 USIE-00 ERDA-05 DODE-00 FEAE-00

FPC-01 H-02 INT-05 L-02 NSC-05 PM-03 SAM-01 OES-03

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C O N F I D E N T I A L SECTION 01 OF 04 OECD PARIS 10256

FOR FSE (BOSWORTH)

E.O. 11652: GDS

TAGS: ENRG, OECD

SUBJECT: IEA: BACKGROUND DOCUMENTS FOR APRIL 28-30
SLT MEETING

BEGIN TEXT

BRIEF ANALYSIS OF TRADE MEASURES FOR THE OPERATION OF
A "FLOOR PRICE" SYSTEM

1. THE FOLLOWING ANALYSIS IS BASED ON THE ASSUMPTION
THAT THE TRADE MEASURES TO BE TAKEN TO ENSURE THE OPERA-
TION OF A "FLOOR PRICE" SYSTEM WOULD BE BASED ON THE
EXISTING LEGISLATION AND CONSTITUTIONAL LIMITATIONS AND
BE DESIGNED, INTER ALIA, TO ENSURE "FAIR TREATMENT" OF
PARTICIPATING COUNTRIES IN RESPECT OF ENERGY PRICES AND
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PAGE 02 OECD P 10256 01 OF 04 221804Z

FACILITATE NON-DISCRIMINATORY ENERGY TRADE AND INVEST-

MENT AMONGST IEA COUNTRIES. THE FOLLOWING TRADE MEASURES ARE CONSIDERED FOR THIS PURPOSE: TARIFFS, VARIABLE LEVIES, QUANTITATIVE IMPORT RESTRICTIONS, STATE TRADING ENTERPRISES OR IMPORT MONOPOLIES.

2. FOR EACH OF THESE MEASURES AN INDICATION IS GIVEN OF ITS MAIN FEATURES, EFFECTIVENESS FOR THE PURPOSE OF A "FLOOR PRICE" SYSTEM AND NATIONAL LEGISLATIVE REQUIREMENTS. ALSO EXAMINED ARE THE COMPATIBILITY OF SUCH MEASURES WITH THE GATT AND RELEVANT GATT PROCEDURES FOR IMPLEMENTING THEM. FINALLY, A FEW GENERAL PROBLEMS, WHICH MAY HAVE TO BE TAKEN INTO CONSIDERATION IF THESE MEASURES ARE APPLIED, ARE BRIEFLY REFERRED TO.

I. MAIN FEATURES AND EFFECTIVENESS OF THE TRADE MEASURES

A. TARIFFS

3. IN THE AD VALOREM TARIFF SYSTEM THE RATE OF THE TARIFF IS A PERCENTAGE OF THE VALUE OF IMPORTS. IN A SYSTEM OF SPECIFIC TARIFFS, THE RATE TO BE CHARGED IS FIXED PER UNIT OF QUANTITY IMPORTED. BESIDES THESE TWO BASIC FORMS OF TARIFFS, SLIDING TARIFFS ARE ALSO APPLIED IN CERTAIN CASES; THEIR RATES DIFFER FOR DIFFERENT IMPORT PRICE LEVELS.

4. GENERALLY THE TARIFF SYSTEM IS SUBJECT TO A SPECIFIC TARIFF LEGISLATION. THE BASIC FORMS OF TARIFFS ARE CLEARLY NOT SUITABLE FOR THE OPERATION OF A "FLOOR PRICE" SYSTEM SINCE THE APPLICABLE RATE WOULD HAVE THE DESIRED EFFECT ONLY IF (INCIDENTALLY) IT CORRESPONDS TO THE DIFFERENCE BETWEEN THE IMPORT PRICE AND THE "FLOOR PRICE". BY CONTRAST THE SLIDING TARIFFS MAY BE SUITABLE IF THE TUNING OF THE RATE IS FINE AND COVERS A WIDE RANGE OF PRICES MAKING IT POSSIBLE TO BRING THE IMPORT PRICES TO A LEVEL RATHER CLOSE TO THAT OF THE "FLOOR PRICE".

B. VARIABLE LEVIES

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CONFIDENTIAL

PAGE 03 OECD P 10256 01 OF 04 221804Z

5. THROUGH THE APPLICATION OF VARIABLE LEVIES, IT IS ENSURED THAT THE PRICE OF IMPORTS CAN BE INCREASED TO THE "FLOOR PRICE", THE AMOUNT OF THE LEVY BEING DETERMINED BY THE DIFFERENCE BETWEEN THE TWO PRICES. THIS METHOD IS USED BY A NUMBER OF COUNTRIES (E.G. THE EUROPEAN COMMUNITIES AND JAPAN) IN CONNECTION WITH AGRICULTURAL IMPORTS. THE INTRODUCTION OF VARIABLE LEVIES

WOULD NECESSITATE A SPECIAL LAW. THERE ARE CASES, HOWEVER, IN WHICH THESE LEVIES ARE APPLIED UNDER COVER OF THE CUSTOMS LEGISLATION.

C. QUANTITATIVE IMPORT RESTRICTIONS

6. UNDER SYSTEMS OF IMPORT QUOTAS THE GOVERNMENT FIXES THE PERMISSIBLE QUANTITY OF IMPORTS. IN THEIR BASIC FORM THERE IS NO DIRECT LINK BETWEEN FIXING THE AMOUNT OF IMPORTS AND THE APPLICATION OF A "FLOOR PRICE". IT

CONFIDENTIAL

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PAGE 01 OECD P 10256 02 OF 04 221816Z

51

ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 AID-05 CEA-01 CIAE-00 COME-00

EB-07 EA-06 FRB-03 INR-07 IO-10 NEA-09 NSAE-00

OPIC-03 SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01

INRE-00 SSO-00 NSCE-00 USIE-00 ERDA-05 DODE-00 FEAE-00

FPC-01 H-02 INT-05 L-02 NSC-05 PM-03 SAM-01 OES-03

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TO SECSTATE WASH DC IMMEDIATE 6697

C O N F I D E N T I A L SECTION 02 OF 04 OECD PARIS 10256

MIGHT, HOWEVER, ALSO BE POSSIBLE TO MAKE THE ALLOCATION OF QUOTAS DEPENDENT ON THE IMPORT PRICE LEVEL. TWO OTHER METHODS FOR LINKING THE IMPORT QUANTITY TO THE IMPORT PRICE ARE CONCEIVABLE: ONE METHOD WOULD CONSIST

IN ALLOCATING A QUOTA TO AN IMPORTER ON CONDITION THAT UNDER GOVERNMENTAL CONTROL HE SELLS THE PRODUCT AT THE IMPORT PRICE AND INSTANTANEOUSLY PURCHASES IT AT THE "FLOOR PRICE". THE OTHER METHOD WOULD CONSIST IN SUBJECTING IMPORTS WHICH ARE UNLIMITED IN QUANTITY TO THE ISSUING OF A LICENSE WHICH WOULD BE GIVEN ONLY IF A CERTAIN IMPORT PRICE LEVEL WERE RESPECTED.

7. THE LEGAL REQUIREMENTS REGARDING QUANTITATIVE IMPORT RESTRICTIONS DIFFER FROM COUNTRY TO COUNTRY. IN SOME CASES CHANGES IN THE EXISTING SYSTEM WOULD REQUIRE LEGISLATIVE ACTION, IN OTHERS GOVERNMENTS MAY HAVE SUFFICIENT

CONFIDENTIAL

PAGE 02 OECD P 10256 02 OF 04 221816Z

FICIENT AUTHORITY TO MODIFY THE WORKING OF THE SYSTEM.

D. STATE TRADING ENTERPRISES OR IMPORT MONOPOLIES

8. BY CHANNELING IMPORTS THROUGH STATE TRADING ENTERPRISES OR IMPORT MONOPOLIES, IT CAN BE ENSURED THAT, WHATEVER THE IMPORT PRICE, THE PRODUCT IS SOLD ON THE DOMESTIC MARKET AT THE "FLOOR PRICE". IN ORDER TO SET UP NEW STATE TRADING ENTERPRISES OR MONOPOLIES, SPECIAL LEGISLATIVE ACTION WOULD BE REQUIRED AND, IN SOME COUNTRIES, PARTICULAR PROBLEMS MIGHT ARISE IF THEY WERE PUT IN CHARGE OF OIL IMPORTS.

II. COMPATIBILITY OF THE TRADE MEASURES WITH THE GATT

9. ALL THE ABOVE MEASURES ARE COVERED BY THE GATT. HOWEVER, THE COERCIVE EFFECTS OF THE AGREEMENT ON THE INTRODUCTION AND OPERATION OF THESE MEASURES VARY:

10. TARIFFS WHICH ARE NOT SUBJECT TO CONCESSIONS TAKEN UP IN THE SCHEDULES OF THE AGREEMENT CAN BE MODIFIED FREELY ON CONDITION THAT THE MOST-FAVORED-NATION CLAUSE IS RESPECTED. AS REGARDS TARIFFS WHICH ARE INCLUDED IN THE SCHEDULES (THE LARGE MAJORITY), ANY MODIFICATIONS CAN ONLY BE MADE IN COMPLIANCE WITH THE FOLLOWING RATHER STRICT PROCEDURES, BUT IT MIGHT BE EXTREMELY DIFFICULT UNDER ANY OF THEM TO OBTAIN AGREEMENT TO MODIFY TARIFF RATES FOR THE PURPOSE OF A "FLOOR PRICE" SYSTEM FOR OIL:

I) ORDINARY PROCEDURES FOR MODIFICATION (ART. XXVIII.2): EVERY THIRD YEAR ON 1ST JANUARY (THE NEXT OCCASION BEING 1ST JANUARY 1976) ANY CONTRACTING PARTY MAY IMPLEMENT MODIFICATIONS OF TARIFFS OR WITHDRAWALS OF CONCESSIONS ON CONDITION THAT PRIOR AGREEMENT HAS BEEN OBTAINED BY OFFERING THE EQUIVALENT AMOUNT OF

COMPENSATION;

II) MODIFICATION IN SPECIAL CIRCUMSTANCES (ART. XXVIII.4): AT ANY TIME A CONTRACTING PARTY MAY IN SPECIAL CIRCUMSTANCES REQUEST THE OPENING OF
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 OECD P 10256 02 OF 04 221816Z

NEGOTIATIONS FOR MODIFICATION OR WITHDRAWAL OF
A CONCESSION;

III) PROCEDURES FOR SAFEGUARD ACTION (ART. XIX):
THE MODIFICATION OF SCHEDULES AND THE WITHDRAWAL OF CONCESSIONS MAY BE POSSIBLE IF THE INCREASE IN THE QUANTITY OF IMPORTS IN QUESTION CAUSES OR THREATENS TO CAUSE SERIOUS INJURY TO DOMESTIC PRODUCERS OF THE PRODUCT OR COMPETING PRODUCTS. ACTION UNDER THIS ARTICLE IS SUBJECT TO STRICT NOTIFICATION AND CONSULTATION PROCEDURES AND MAY REQUIRE COMPENSATION AND, IF NOT APPROVED, BE SUBJECT TO RETALIATION;

IV) CUSTOMS UNIONS OR FREE TRADE AREAS (ART. XXIV):
IN THE CASE OF CUSTOMS UNIONS OR FREE TRADE AREAS THE MODIFICATION OF SCHEDULES OR WITHDRAWALS OF CONCESSIONS MAY BE AUTHORIZED ON CONDITION THAT INTERESTED CONTRACTING PARTIES AGREE TO THEM AND ARE SATISFIED WITH THE COMPENSATIONS OFFERED;

V) GENERAL WAIVER (ART. XXV.5): THE CONTRACTING PARTIES MAY WAIVE AN OBLIGATION UNDER THE GATT IF A TWO-THIRDS MAJORITY OF VOTES CAST, WHICH SHALL COMPRISE MORE THAN HALF OF THE CONTRACTING PARTIES, IS OBTAINED.

CONFIDENTIAL

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PAGE 01 OECD P 10256 03 OF 04 221815Z

51

ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 AID-05 CEA-01 CIAE-00 COME-00

EB-07 EA-06 FRB-03 INR-07 IO-10 NEA-09 NSAE-00

OPIC-03 SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01

INRE-00 SSO-00 NSCE-00 USIE-00 ERDA-05 DODE-00 FEAE-00

FPC-01 H-02 INT-05 L-02 NSC-05 PM-03 SAM-01 OES-03

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TO SECSTATE WASH DC IMMEDIATE 6698

C O N F I D E N T I A L SECTION 03 OF 04 OECD PARIS 10256

11. AS FAR AS VARIABLE LEVIES ARE CONCERNED, THE IMPOSITION OF NEW LEVIES IS INCOMPATIBLE WITH PARAGRAPH 1(B) OF ARTICLE II (SCHEDULE OF CONCESSIONS). IF, HOWEVER, NEW LEVIES ARE INTRODUCED OR EXISTING ONES INCREASED BY A CONTRACTING PARTY, OTHER CONTRACTING PARTIES CAN REQUEST CONSULTATION IN ACCORDANCE WITH ARTICLE XXII (CONSULTATION) OR RESORT TO ARTICLE XXIII (NULLIFICATION OR IMPAIRMENT); UNDER THE PROVISIONS OF THESE ARTICLES THE CONTRACTING PARTIES MAY MAKE APPROPRIATE RECOMMENDATIONS AND, IF NO SATISFACTORY ADJUSTMENT IS EFFECTED, MAY DECIDE TO SUSPEND THE APPLICATION OF CONCESSIONS OR OTHER OBLIGATIONS TO THE CONTRACTING PARTIES.

12. PARAGRAPH 1 OF ARTICLE XI (GENERAL ELIMINATION OF QUANTITATIVE RESTRICTIONS) PROHIBITS THE INSTITUTION OF CONFIDENTIAL

CONFIDENTIAL

PAGE 02 OECD P 10256 03 OF 04 221815Z

QUANTITATIVE RESTRICTIONS AND IMPORT LICENSES AS A FUNDAMENTAL PRINCIPLE. DEROGATIONS FROM THIS PRINCIPLE ARE, HOWEVER, ALLOWED IN CERTAIN CIRCUMSTANCES, I.E. IN CONNECTION WITH: SAFEGUARD ACTIONS IN CASE OF BALANCE OF PAYMENTS DIFFICULTIES (ART. XII); PERMISSIBLE RESTRICTIONS TO AGRICULTURAL PRODUCTS (ART. XI.2(C)); IMPORTS BY COUNTRIES IN THE EARLY STAGES OF DEVELOPMENT (ART. XVIII); THE OPERATION OF STATE TRADING ENTERPRISES

(ART. XVII); EMERGENCY ACTION ON IMPORTS OF PARTICULAR PRODUCTS (ART. XIX); RETALIATION (ART. XXIII); WAIVERS (ART. XXV.5).

13. UNDER ARTICLE XVII (STATE TRADING ENTERPRISES) AND PARAGRAPH 4 OF ARTICLE II (SCHEDULES OF CONCESSIONS) GOVERNMENTS MAY ENTRUST THE IMPORTS OF A GIVEN PRODUCT TO STATE TRADING ENTERPRISES OR TO AN IMPORT MONOPOLY ORGANIZATION UNDER THE FOLLOWING CONDITIONS: THE ENTERPRISES OR MONOPOLIES SHALL ACT IN A MANNER CONSISTENT WITH THE PRINCIPLE OF NON-DISCRIMINATORY TREATMENT AND WITH COMMERCIAL CONSIDERATIONS PRESCRIBED IN THE AGREEMENT; IN THE CASE OF THE INSTITUTION OF A NEW MONOPOLY, THE PRODUCT IN QUESTION SHALL NOT BE AFFORDED GREATER PROTECTION THAN UNDER THE SCHEDULE. MOREOVER, THE GOVERNMENT SHALL, ON REQUEST, SUPPLY RELEVANT INFORMATION ON THE OPERATION OF THESE ENTERPRISES OR ORGANIZATIONS.

14. SUMMING UP, IT IS EVIDENT THAT A RESORT TO TARIFFS AND QUANTITATIVE IMPORT RESTRICTIONS FOR THE PURPOSE OF A "FLOOR PRICE" SYSTEM FOR TRADE IN OIL AND OIL PRODUCTS WOULD RAISE CONSIDERABLE PROBLEMS WITH REGARD TO RULES AND PROCEDURES OF THE GATT. AS REGARDS VARIABLE LEVIES, WHILE DIFFICULTIES CONCERNING THE RULES WOULD CERTAINLY BE GREAT THEY WOULD ON THE WHOLE APPEAR TO BE LESS AS FAR AS PROCEDURES ARE CONCERNED, PARTICULARLY SINCE THEY ARE, AS A RULE, NOT SPECIFICALLY COVERED IN THE CONCESSIONS. THE PRACTICE SHOWS, MOREOVER, THAT THERE ARE A NUMBER OF PROCEDENTS FOR SUCH LEVIES. FINALLY, OBLIGATIONS UNDER THE GATT RULES AND PROCEDURES REGARDING STATE TRADING ENTERPRISES AND IMPORT MONOPOLIES APPEAR RELATIVELY LOOSELY SPECIFIED.

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 OECD P 10256 03 OF 04 221815Z

15. WHATEVER THE CHOICE OF THE MEASURE, HOWEVER, IT HAS, IN ACCORDANCE WITH THE MFN PRINCIPLE, TO BE EQUALLY APPLIED TO ALL CONTRACTING PARTIES.

16. FOR THESE REASONS IT IS IMPORTANT TO NOTE THAT FIVE OPEC COUNTRIES ARE CONTRACTING PARTIES OF THE GATT (GABON, INDONESIA, KUWAIT, NIGER, TRINIDAD AND TOBAGO) AND FOUR OTHERS (ALGERIA, BARHAIN, QUATAR AND THE UNITED ARAB EMIRATES) TO WHOSE TERRITORIES THE GATT HAS BEEN APPLIED, MAINTAIN NOW, AS INDEPENDENT STATES, A DE FACTO APPLICATION OF THE GATT PENDING FINAL DECISIONS AS TO THEIR FUTURE COMMERCIAL POLICY. MOREOVER, OECD MEMBERS GENERALLY DO NOT DISCRIMINATE AGAINST OPEC COUNTRIES AND, EXCEPT MAINLY FOR THE UNITED STATES AND CANADA, THEY EXTEND MFN TREATMENT EVEN TO THOSE OPEC MEMBERS

WHICH ARE NOT CONTRACTING PARTIES (SAUDI ARABIA, VENEZUELA, IRAN AND IRAQ). FINALLY IT SHOULD NOT BE OVERLOOKED THAT OECD MEMBER COUNTRIES GENERALLY DID NOT DISCRIMINATE AGAINST THE OPEC COUNTRIES WHEN INTRODUCING A GENERALIZED SYSTEM OF PREFERENCES IN FAVOR OF IMPORTS FROM DEVELOPING COUNTRIES.

III. GENERAL PROBLEMS LINKED WITH A "FLOOR PRICE" SYSTEM

17. IF IEA COUNTRIES DECIDE TO DISCRIMINATE IN THE

CONFIDENTIAL

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PAGE 01 OECD P 10256 04 OF 04 221818Z

51

ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 AID-05 CEA-01 CIAE-00 COME-00

EB-07 EA-06 FRB-03 INR-07 IO-10 NEA-09 NSAE-00

OPIC-03 SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01

INRE-00 SSO-00 NSCE-00 USIE-00 ERDA-05 DODE-00 FEAE-00

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TO SECSTATE WASH DC IMMEDIATE 6699

C O N F I D E N T I A L SECTION 04 OF 04 OECD PARIS 10256

APPLICATION OF ANY MEASURE MENTIONED ABOVE AGAINST, FOR INSTANCE, OPEC COUNTRIES OR AGAINST ALL THIRD COUNTRIES IT IS HARDLY CONCEIVABLE THAT THIS COULD BE DONE ON AN

AGREED BASIS IN THE FRAMEWORK OF THE GATT. ANY DISCRIMINATORY ACTION WOULD ALSO RAISE A NUMBER OF OTHER PROBLEMS OF PRACTICAL APPLICATION:

FIRST, IN CASE OF DISCRIMINATION ACCORDING TO THE SOURCE OF IMPORTATION, IT MAY BE NECESSARY TO INTRODUCE CERTIFICATES OF ORIGIN SINCE SOME IMPORTS MAY NOT ARRIVE DIRECTLY FROM THE PRODUCING NON-IEA COUNTRY, AS THEY MIGHT BE CHANNLED THROUGH A THIRD COUNTRY (OR A BONDED AREA IN A THIRD COUNTRY) OR THROUGH A BONDED AREA IN ANY IEA COUNTRY.

SECONDLY, MOST PROBLEMS (E.G. THOSE OF ENSURING
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 OECD P 10256 04 OF 04 221818Z

THE SYSTEM'S EFFECTIVENESS, OF PASSING THE LEGISLATION'S HURDLES, OF COMPATIBILITY WITH INTERNATIONAL OBLIGATIONS, OF PRACTICAL ADMINISTRATION) ARISING FROM THE USE OF ANY OF THE APPLICABLE TRADE MEASURES ARE THE GREATER THE MORE ADVANCED A PROCESSING STAGE THE IMPORTED PRODUCT COVERED BY THE "FLOOR PRICE" SYSTEM HAS GONE THROUGH.

THIRDLY, THE EFFECTIVE OPERATION OF THE "FLOOR PRICE" SYSTEM PRESUPPOSES THAT OIL (OR OIL PRODUCTS) BE OFFERED ON THE WORLD MARKET BELOW THE "FLOOR PRICE". THEREFORE IT MAY BE USEFUL TO CONSIDER THE EFFECTS OF THE APPLICABLE TRADE MEASURES ON THE GAINS RESULTING FROM THE DIFFERENCES BETWEEN THE "FLOOR PRICE" AND THE IMPORT PRICE AND, PARTICULARLY, ON THE PLACE WHERE THESE WOULD BE REALIZED. THUS IF SLIDING TARIFFS ARE APPLIED, THE GAINS RESULTING FROM THE "FLOOR PRICE" SYSTEM ARE CHANNELLED BACK INTO THE ECONOMY OF THE IMPORTING COUNTRY THROUGH THE BUDGET. IN THE CASE OF VARIABLE LEVIES, STATE TRADING ENTERPRISES AND IMPORT MONOPOLY ORGANIZATIONS (AND ALSO METHODS FOR RESTRICTING IMPORTS QUANTITATIVELY WHICH ARE SIMILAR TO THE OPERATIONS OF THESE ORGANIZATIONS) THE SITUATION IS BASICALLY THE SAME BUT THE GAINS MAY BE EARMARKED DIRECTLY FOR SPECIAL PURPOSES. IN THE CASE OF IMPORT QUOTAS AND LICENSING SYSTEMS, HOWEVER, THE GAINS ARE MADE BY THE IMPORTER AND/OR OTHER INTERMEDIARIES.

18. ANOTHER GENERAL QUESTION WHICH MAY DESERVE ATTENTION CONCERNS THE DIFFERENT DEGREE WITH WHICH THE MEASURES MAY SECURE ADDITIONAL GOVERNMENT REVENUES BY FAVORING PRICE COMPETITION BELOW THE "FLOOR PRICE" LEVEL BETWEEN NON-IEA COUNTRIES. IN SUCH CASES THE OPERATION OF STATE TRADING OR IMPORT MONOPOLY ORGANIZATIONS (AND ALSO SPECIAL METHODS FOR RESTRICTING THE IMPORT QUANTITY WHICH OPERATE IN A SIMILAR MANNER) WOULD BE EFFECTIVE AS

THESE ORGANIZATIONS WOULD TEND TO BUY FROM THE CHEAPEST SOURCE. THE SLIDING TARIFF SYSTEM MAY ALSO FAVOR SOMEWHAT PRICE COMPETITION IF THE GOVERNMENT CAN PROVIDE IN THE SYSTEM A CERTAIN ENCOURAGEMENT FOR LOW PRICE IMPORTS. IMPORT QUOTAS OR LICENSES WOULD NOT, HOWEVER, BE HELPFUL IN THIS REGARD.

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 OECD P 10256 04 OF 04 221818Z

19. FINALLY, IT MIGHT BE CONSIDERED HOW THE TRADE MEASURES APPLIED WOULD INFLUENCE THE TREND IN THE CURRENT BALANCE IF OIL PRICES OF CERTAIN NON-IEA COUNTRIES ARE LOWER THAN THE "FLOOR PRICE". THIS INFLUENCE WOULD, IN THE MAIN, DEPEND ON THE COMBINED EFFECTS OF THE MEASURES ON PRICE COMPETITION AND ON LOCATING THE GAINS REALIZED UNDER THE SYSTEM. END TEXT
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